



**IN THE COURT OF CRIMINAL APPEALS
OF TEXAS**

NO. WR-65,137-04

EX PARTE CLINTON LEE YOUNG, Applicant

**ON APPLICATION FOR POST-CONVICTION WRIT OF HABEAS CORPUS
IN CAUSE NO. CR-27181-D IN THE 385TH JUDICIAL DISTRICT COURT
MIDLAND COUNTY**

Per curiam.

ORDER

We have before us a subsequent application for a writ of habeas corpus filed pursuant to the provisions of Texas Code of Criminal Procedure Article 11.071 § 5 and a motion to stay applicant's execution.¹

In April 2003, a jury found applicant guilty of the 2001 capital murder of Samuel Petrey. The jury answered the special issues submitted pursuant to Texas Code of Criminal

¹ Unless otherwise indicated, all future references to Articles are to the Texas Code of Criminal Procedure.

Procedure Article 37.071, and the trial court, accordingly, set applicant's punishment at death. This Court affirmed applicant's conviction and sentence on direct appeal. *Young v. State*, No. AP-74,643 (Tex. Crim. App. Sept. 28, 2005)(not designated for publication).

Applicant raised fourteen allegations in his initial application for a writ of habeas corpus, including allegations that: his punishment was excessive because he did not kill, intend to kill, or anticipate that the victim would be killed; his punishment was excessive because of his youth (just over 18 years of age) and immaturity; his trial counsel was ineffective for failing to discover and present evidence of abuse and for failing to object to the admission of Texas Youth Commission records; and his rights were violated by prosecutorial and police misconduct (*Brady*² claims). This Court adopted the trial court's findings of fact and conclusions of law and denied relief on applicant's claims. *Ex parte Young*, Nos. WR-65,137-01 and WR-65,137-02 (Tex. Crim. App. Dec. 20, 2006)(not designated for publication).

In his first subsequent application, applicant raised nine additional claims. In this subsequent application, applicant raised more ineffective assistance of counsel claims. He also raised several *pro se* claims of ineffective assistance of counsel and prosecutorial misconduct. This application was dismissed because none of the claims met the requirements of Article 11.071 § 5. *Id.*

On March 25, 2009, applicant filed in the trial court his second subsequent application

² *Brady v. Maryland*, 373 U.S. 83 (1963).

for a writ of habeas corpus. Applicant raised four claims in that application, including assertions that: the prosecution failed to turn over *Brady* evidence regarding any plea deals or negotiations with the two co-defendants, Ray and Page; the prosecution suppressed evidence concerning State witness A.P. Merillat that could have been used to impeach him; the judge who presided over the trial was not impartial; and habeas counsel was ineffective.

This Court dismissed the third and fourth claims, but found that the first two claims met the requirements of Article 11.071 § 5 and remanded those claims to the trial court. *Ex parte Young*, No. WR-65,137-03 (Tex. Crim. App. June 3, 2009)(not designated for publication). During the remand, applicant waived the second claim. When the case was returned to this Court, we denied relief on the first claim and dismissed the waived claim. *Ex parte Young*, No. WR-65,137-03 (Tex. Crim. App. June 20, 2012)(not designated for publication).

On October 2, 2017, applicant filed the instant application in the trial court, in which he raises eight claims. Specifically, applicant claims that: false or misleading testimony was introduced against him at trial; he is entitled to relief under Article 11.073 because previously unavailable scientific evidence shows he did not cause Petrey's death; he is actually innocent; the prosecution failed to preserve evidence and withheld impeachment and exculpatory evidence from him, in violation of *Brady v. Maryland*, 373 U.S. 83 (1963); trial counsel was ineffective; and the combined errors rendered his trial fundamentally unfair.

Applicant has failed to make a *prima facie* case of innocence or a *prima facie* case that he meets the requirements of Article 11.073. Applicant has only met the requirements of Article 11.071 § 5 regarding his first allegation, in which he contends that false or misleading testimony was introduced at trial. In December 2009, this Court held in *Ex parte Chabot* that the knowing or unknowing use of false or perjured testimony violates due process. *Chabot*, 300 S.W.3d 768 (Tex. Crim. App. 2009). *Chabot* provides a new legal basis which was not available at the time applicant filed his last writ application. Thus, we find that he has met the requirements of Article 11.071 § 5(a)(1) for his first allegation, and it is remanded to the trial court for resolution. Applicant's motion to stay his execution is granted.

IT IS SO ORDERED THIS THE 18th DAY OF OCTOBER, 2017.

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